

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

DANIEL LIPSKY,

Plaintiff,

vs.

NATE CRONIN;
BILL WAINMAN;
MICHAEL CLOSE; and
CITY OF HOT SPRINGS, SD,

Defendants.

5:22-CV-05039-LLP

ORDER

Plaintiff again asks the Court to recuse itself from the case. Plaintiff as in the previous motion for recusal relies upon the fact that Plaintiff has filed a lawsuit against Judge Piersol, which contains various allegations and is a claim against Judge Piersol in his individual capacity. The suit against Judge Piersol is without merit as any acts or omissions by Judge Piersol in Plaintiff's case were done in Judge Piersol's official capacity as the judge assigned to the case. "[N]either a litigant, nor its counsel, should be permitted to judge shop by making written attacks upon, or filing a complaint against, the assigned judge." *K&F Holdings, Ltd.*, 2017 U.S. Dist. LEXIS 154463, at *8 (M.D. La. 2107). Further, "A party cannot force disqualification by attacking the judge and then claiming that these attacks must have caused the judge to be biased against [her]." *FDIC v. Sweeney*, 136 F.3d 216, 219 (1st Cir. 1998) (citing Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3542 at 577-78). Nothing has been shown that would "display a deep-seated favoritism or antagonism that would make fair judgment

impossible.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). There is no basis for recusal and that request is denied.

In Plaintiff’s latest motion to recuse, filed October 10, 2024, Plaintiff also stated that he planned to appeal an adverse decision of this motion to recuse. And Plaintiff requested “an extension of time for it to be settled.” The Court interprets that as a request that the pending motion for summary judgment not be ruled upon until the proposed appeal from this denial of recusal is resolved by the United States Court of Appeals for the Eighth Circuit. There is no basis for an intermediate appeal from this denial of a recusal and the court anticipates that there will be no hearing of such an attempted appeal. The motion for summary judgement was filed on June 3, 2024. No response has been made by the Plaintiff to that motion. The Court will not rule on the Defendant’s summary judgment motion until 30 days after the Court of Appeals for the Eighth Circuit rules on an attempted appeal from this Order.

IT IS HEREBY ORDERED that the Plaintiff’s Motion to Recuse, Doc. 73, is DENIED.

DATED this 24th day of October, 2024.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "Lawrence L. Piersol", is written over a horizontal line.

LAWRENCE L. PIERSOL
United States District Judge